STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

VASEL JUNCAJ, HANA JUNCAJ, LJENA JUNCAJ, SONIA JOHN, and SUSAN JOHN, a Minor, by her Next Friend AKHTAR JOHN,

Defendants-Appellees.

UNPUBLISHED
August 6, 2002

No. 231298
Wayne Circuit Court
LC No. 99-923158-CZ

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying its motion for summary disposition and granting the motions for summary disposition filed by defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In March 1996 defendant Vasel Juncaj submitted an application to plaintiff for insurance on a vehicle. He indicated that he lived in St. Clair Shores. Plaintiff issued the policy. Shortly thereafter Juncaj telephoned plaintiff and added two additional vehicles to the policy, one of which was a van. On March 20, 1998 defendant Hana Juncaj, the daughter of Vasel Juncaj and defendant Ljena Juncaj, was operating the van and was involved in an accident. Her passengers, defendants Sonia John and Susan John, were injured. Hana Juncaj, who was sixteen years old when the accident occurred, was not listed as an insured driver on the policy issued by plaintiff.

A suit brought by Sonia and Susan John against the Juncaj family precipitated an investigation by plaintiff. Subsequently, plaintiff rescinded the Juncaj policy on the ground that Vasel Juncaj made material misrepresentations by giving a St. Clair Shores address when he in fact lived in Hamtramck, and by failing to include Hana Juncaj on the policy as the principal driver of the van. Plaintiff relied on the policy's Condition 20 which provided that the entire policy was void if an insured person intentionally concealed or misrepresented a material fact relating to the policy, the application for the policy, or any claim made under the policy.

Plaintiff filed the instant declaratory action seeking a declaration that due to Vasel Juncaj's fraud and/or misrepresentation in procuring his policy, its liability for the accident could not exceed the statutorily required limits of $20,000 per person/$40,000 per accident. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that Vasel

Juncaj perpetuated a fraud by misrepresenting his address and failing to include Hana Juncaj as a driver on the policy. Defendants Juncaj and John filed separate motions for summary disposition pursuant to MCR 2.116(C)(8), asserting that because Vasel Juncaj made no misrepresentations at the time he applied for the policy, and because had plaintiff been aware that Vasel Juncaj returned to the family home in Hamtramck and that Hana Juncaj began driving it would have increased the premium rather than cancel the policy, plaintiff was not entitled to rescind the policy. The trial court denied plaintiff's motion and granted defendants' motions. The court found that Vasel Juncaj did not make material misrepresentations, and that nothing indicated that he was not otherwise insurable.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

If an insured makes a material misrepresentation on an application for insurance, the insurer is entitled to rescind the policy and declare it void ab initio. An insurer is justified in rescinding the policy if it relied on a misrepresentation that related to the insurer's guidelines for determining eligibility for coverage. *Lake States Ins Co v Wilson*, 231 Mich App 327, 331; 586 NW2d 113 (1998). However, once an innocent third party is injured in an accident that is subject to the coverage provided by the policy, the insurer is estopped from asserting fraud to rescind the policy with respect to required coverage. *Id*., 331-332; MCL 257.520(f)(1).

Plaintiff argues that the trial court erred by denying its motion for summary disposition and granting the motions filed by defendants. Plaintiff asserts that it was entitled to void the Juncaj policy for material misrepresentations, i.e., his failure to reveal his correct address, and his failure to add Hana Juncaj as a driver, that occurred after the application stage. We disagree and affirm. Plaintiff asserted that Vasel Juncaj made a material misrepresentation when he applied for insurance by stating that he lived in St. Clair Shores; however, plaintiff presented no evidence that created a question of fact on this issue.

Moreover, it was undisputed that at the time that Vasel Juncaj applied for insurance from plaintiff, Hana Juncaj was too young to obtain a driver's license. Plaintiff did not contend below and does not contend on appeal that Vasel Juncaj was required to list Hana Juncaj on the policy beginning on its effective date. The trial court correctly found that no genuine issue of fact existed as to whether Vasel Juncaj made a material misrepresentation at the time he applied for insurance from plaintiff.

It was also undisputed that Vasel Juncaj failed to inform plaintiff that he returned to the family home in Hamtramck and that Hana Juncaj began driving. However, no evidence established that had plaintiff been timely informed of these developments, it would have determined that Vasel Juncaj was not eligible for coverage. The trial court correctly determined that rescission was not justified under the circumstances. *Lake States*, *supra*.

Plaintiff's reliance on *Cohen v Auto Club Ins Ass'n*, 463 Mich 525; 620 NW2d 840 (2001), is misplaced. In that case our Supreme Court held that an insurer's ability to abrogate that portion of a policy providing excess coverage, i.e., coverage not mandated by statute, is governed by the terms of the policy itself rather than by MCL 257.520(f)(1). For that reason, Condition 20 of the plaintiff's policy, the identical Condition contained in the policy issued to Vasel Juncaj, supported rescission of the plaintiff's policy on the ground that she made a material

misrepresentation regarding a claim for uninsured motorist coverage, a type of coverage not required by statute. Rescission was justified notwithstanding the fact that the misrepresentation occurred after the application had been processed and the policy was in effect. *Id*., 532. However, in the instant case the trial court correctly found that Vasel Juncaj did not make a material misrepresentation. In the absence of a material misrepresentation, rescission of that portion of the policy providing liability coverage in excess of the mandated $20,000/$40,000 limits was not justified. *Lake States*, *supra*.

In addition, plaintiff relies on *Oade v Jackson National Life Ins Co*, 465 Mich 244; 632 NW2d 126 (2001), for the proposition that a misrepresentation that would have resulted in the charging of a higher premium justifies rescission of the policy. However, that case dealt with MCL 500.2218, the misrepresentation provision specifically applicable to life insurance contracts, and thus is distinguishable. Nothing in *Oade*, *supra*, indicates that the holding in *Lake States*, *supra*, is no longer viable.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra